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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

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| 11 TERRI COONES, | Case No.: CV-09-275-LRS |
| 12 Plaintiff, | MEMORANDUM IN SUPPORT OF |
| 13 vs. | DEFENDANT'S MOTION FOR |
| 14 PROGRESSIVE FINANCIAL | EXPEDITED HEARING TO ORDER |
| SERVICES, INC., | TO COMPEL PRODUCTION OF |
| 15 Defendant. | REDACTED PORTION OF |
| | ENGAGEMENT AGREEMENT AND |
| | FOR IN CAMERA REVIEW OF |
| | ENGAGEMENT AGREEMENT |

16
17 On or about 10/21/09, Plaintiff accepted the following offer:

18 Pursuant to Rule 68 of the Federal Rules of Civil Procedure,
19 Progressive Financial Services, Inc. ("PFS"), by counsel, hereby
20 offers to allow judgment to be taken against it in favor of Terri
Coones ("Coones"), on the following terms:

21 JUDGMENT IS HEREBY ENTERED AS FOLLOWS:

- 22 1. PFS shall pay to Coones the sum total of \$1,001.00;

MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION FOR EXPEDITED HEARING TO ORDER TO
COMPEL PRODUCTION - 1
Case No. CV-09-275-LRS

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1 2. PFS shall pay Coones's reasonable costs and reasonable
2 attorney's fees now accrued in connection with the above-referenced
3 action as to PFS and PFS's current and former employees; said fees
4 and costs are to be in an amount as agreed to between counsel for the
5 parties, or if they are unable to agree, as determined by the Court upon
6 motion;

7 3. This judgment is a compromise of a disputed claim and is
8 not to be deemed an admission of fault or liability on the part of PFS
9 or any of PFS's current or former employees. This judgment is in
10 total resolution of any and all claims and allegations by Coones
11 against, implicating or involving PFS and its current and former
12 employees, owners, and agents;

13 4. This judgment shall act to dismiss with prejudice all
14 claims of Coones as to PFS and PFS's current and former employees.

15 The only judgment that can be entered is a Judgment of dismissal with
16 prejudice.

17 PFS' position was that prior to submission of a motion to court, Coones
18 should provide Coones' attorneys time records in support of Coones' attorney's
19 request for attorney fees so the parties can determine if they are unable to agree.

20 PFS requested the time records shortly after acceptance.

21 On November 4, 2009, Coones' attorney stated "We are processing and will
22 send to you to consider prior to submitting our bills as part of any application for
approval of fees."

 In response, on November 4, 2009, PFS' attorney pledged a prompt review
and turnaround from when the time records are received.

 On November 13, 2009, Coones' attorney's office informed PFS' attorney
that Coones' attorney refuses to supply Coones' attorneys' time records. Coones'

1 attorney states that Coones' attorney will supply the time records after judgment is
2 entered. Coones' attorney's position is that the November 4, 2009 communication
3 was intended to state that Coones' attorney would not supply the time records until
4 after judgment was entered.

5 On November 16, 2009, PFS had a subpoena served on Coones' attorney for
6 the appropriate records, and the engagement agreement, and requested a response
7 on or before November 30, 2009. [Doc. 10].

8 On or about November 21, 2009, PFS paid Coones the \$1,001 referred to in
9 Paragraph 1 of the Rule 68 offer.

10 On November 25, 2009, at the status conference, the subpoena response date
11 was extended to December 7, 2009. Also, the Court refused Coones' attorney's
12 request to quash the subpoena at the same conference.

13 On December 7, 2009, Coones' attorney supplied a redacted engagement
14 agreement, and time records.

15 Those records were promptly reviewed by PFS, and the parties reached an
16 impasse on what were reasonable attorney fees and costs.

17 One of the factors used to determine lodestar reasonable attorney fees on a
18 petition for attorney fees is the agreement between the parties. If the agreement is
19 contingent, the reasonable amount of attorney fees may be affected. If the
20 agreement is hourly, it may be affected.

21 RPC 1.6 (a) states "A lawyer shall not reveal information relating to the
22 representation of a client..." with certain exceptions.

1 One of the exceptions is that “A lawyer to the extent the lawyer reasonably
2 believes necessary: ... may reveal information relating to the representation of a
3 client ... to respond to allegations in any proceeding concerning the lawyer’s
4 representation of the client; and may reveal information relating to the
5 representation of a client to comply with a court order. ...” RPC 1.6(b)(5-6).

6 The information related to the fee arrangement is not privileged. See State
7 v. Sheppard, 52 Wn. App. 707, 763 P.2d 1232 (1988) and Seventh Elect Church In
8 Israel v. Rogers, 102 Wn.2d 527, 688 P.2d 506 (1984). Coones’ attorney has
9 redacted nearly all the section entitled “Attorney Fees Explanation”. This portion
10 does not seem to be protected by privilege as it is not “information relating to the
11 representation of a client ...”

12 The portion related to “Court Costs” is also mostly redacted. This is not
13 protected.

14 Since the other portions are redacted, it is hard to determine which portions
15 are privileged communications.

16 The Court should review in camera the agreement, and determine which
17 portions are privileged, and the remaining portions of the agreement should be
18 revealed to PFS.

1 The Court should further award PFS attorney fees for this expedited motion
2 based on the bad faith redactions.

3 DATED: December 9, 2009

4 DAVENPORT & HASSON, LLP
5 s/ Jeffrey I. Hasson
6 Jeffrey I. Hasson, WSBA#23741
7 Counsel for Defendant
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MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION FOR EXPEDITED HEARING TO ORDER TO
COMPEL PRODUCTION - 5
Case No. CV-09-275-LRS

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